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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,758	04/18/2006	Joseph Noblett	5955300021	3003
32294 7590 05/23/2011 Squire, Sanders & Dempsey (US) LLP 8000 TOWERS CRESCENT DRIVE 14TH FLOOR VIENNA, VA 22182-6212				
EXAMINER NGUYEN, TRINH T				
ART UNIT		PAPER NUMBER		
3644				
NOTIFICATION DATE		DELIVERY MODE		
05/23/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPGENERALTYC@SSD.COM
SONIA.WHITNEY@SSD.COM

Office Action Summary

Application No.

10/565,758

Applicant(s)

NOBLETT, JOSEPH

Examiner

TRINH T. NGUYEN

Art Unit

3644

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE dated 3/29/11.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 17, 19 and 37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 17, 19 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination under 37 CFR 1.114 After Final Rejection

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/29/11 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Sullivan (US 3862733).

For claim 1, Sullivan discloses a tree stand comprising
a fluid reservoir (15) about a tree retaining member (28) including tree gripping means (48),
wherein the fluid reservoir comprises a cylindrical or frustoconical member being closed at one end thereof by a base (14),

wherein the tree retaining member is connected to the base;

wherein the tree retaining member comprises an aperture (47) located on a side adjacent to a base of the tree retaining member and a substantially cylindrical hollow member,

where the tree gripping means comprising comprises a plurality of projections (48) arranged on the interior surface of the tree retaining member and extending in a radial fashion, inwardly from an interior surface of the tree retaining member,

wherein the projections run substantially axially with the tree retaining member and include a sharp or pointed portion arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member, and

wherein the tree retaining member is configured to hold a tree inserted therein without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand.

For claim 17, Sullivan discloses the projections (48) are arranged to maintain a degree of separation between a tree trunk inserted into the tree stand, and portions of the interior surface of the tree retaining member.

For claim 19, Sullivan discloses the fluid reservoir and tree retaining member are in fluid communication (thru aperture 47).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan (US 3862733).

For claim 5, as described above, Sullivan discloses most of the claimed invention except for indicating that the tree retaining member does not substantially protrude from the fluid reservoir. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made that whether the tree retaining member of Sullivan does or does not substantially protrude from the fluid reservoir is a matter of design choice and it appears that the invention would perform equally well with the tree retaining member protrudes from the fluid reservoir such as one taught by Sullivan.

For claim 37, as described above, Sullivan discloses most of the claimed invention except for indicating that the aperture comprises a slot cut in a curved surface of the tree retaining member. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the aperture of Sullivan in whatever form or shape (i.e., a slot cut in a curved surface) was desired or expedient, wherein applicant did not provide a reason or a stated problem is solved by having the specific shape as claimed versus the shape taught by the prior art. Note that a change in form or shape is generally recognized as being well known within the level to one of ordinary skill in the art depending on one's intended use.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRINH T. NGUYEN whose telephone number is (571)272-6906. The examiner can normally be reached on M-F (8:00 A.M to 4:30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Collins can be reached on (571) 272-6886. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. T. N./
Primary Examiner, Art Unit 3644